A

TAN YOKE KWEE & ORS

v.

SISTEM LINGKARAN LEBUHRAYA SDN BHD & ORS

B

HIGH COURT MALAYA, SHAH ALAM
ZALEHA ZAHARI J
[ORIGINATING SUMMONS NO: MT3-21-164-2003]
13 APRIL 2009

C ***LAND LAW:*** *Acquisition of land - Compensation - Expiry of leases - Locus standi to commence proceedings - Jurisdiction of State Authority - National Land Code, ss. 46(1)(a), 47(1), (2), 48, 341*

LAND LAW: *Acquisition of land - Compulsory acquisition - Compensation - Procedure to be followed - Jurisdiction of State Authority* D *- Land Acquisition Act 1960, ss. 36, 37, 38*

CONSTITUTIONAL LAW: *Right to property - Compensation - Expiry of leases - Locus standi to commence proceedings - Jurisdiction of State Authority - National Land Code, ss. 46(1)(a), 47(1), (2), 48,* E *341*

CONSTITUTIONAL LAW: *Right to property - Acquisition and compensation - Procedure to be followed - Jurisdiction of State Authority - Land Acquisition Act 1960, ss. 36, 37, 38*

F ***CIVIL PROCEDURE:*** *Originating summons - Whether application can be made by originating summons - Procedure to be followed - Land Acquisition Act 1960, ss. 36, 37, 38*

CIVIL PROCEDURE: *Striking out - Application for - Originating* G *summons - Whether plain and obvious case warranting exercise of court's power of striking out*

The 1st defendant was awarded a concession to build the Traffic Dispersal Ring Road linking Kajang and its surrounding areas to H Kuala Lumpur ('the project'). The lands which were the subject matter of this application were among the lands affected by the project, with the plaintiffs contending that the defendants had failed to discharge their duties and responsibilities according to the law. This originating summons was grounded on the basis that the I plaintiffs fell into two groups, those whose lands/properties were the subject of acquisition under the Land Acquisition Act 1960 ('the Act') and those who continued to stay on the lands upon

expiration of their leases. All of them sought the following: that the defendants were liable to pay each plaintiff the sum of RM350,000 as well as allot to each of them a suitable piece of land of 3,500 square feet within the nearby vicinity at the defendants' cost and expense, and that pending the determination of these proceedings the defendants were to be restrained from demolishing or trespassing onto the plaintiffs' buildings or land. The defendants applied to strike out the plaintiffs' application on the following grounds: (i) in respect of the plaintiffs whose leases had expired, they did not have any right or interest recognised by law and, therefore, had no *locus standi* to commence these proceedings. The prayers sought by this category of plaintiffs were not within the court's jurisdiction to make, but fell under the jurisdiction of the State Authority; and (ii) as for the plaintiffs whose lands were subjected to acquisition proceedings in accordance with the procedure prescribed by the Act for the project's purposes, they ceased to have any interest in respect of the acquired lands. If these plaintiffs were unhappy with the compensation awarded, the procedure they should have adopted was to appeal by way of an application pursuant to ss. 36-38 of the Act.

Held (striking out the plaintiffs' application):

(1) From ss. 46(1)(a), 47(1), (2), 48 and 341 of the National Land Code, it is abundantly clear that upon the expiration of a lease the land reverts back to the State Authority. The power to extend a lease falls within the jurisdiction of the State Authority, not the court. Thus, the plaintiffs who fell under this category clearly had no *locus standi* to commence these proceedings and were accordingly not entitled to the orders prayed for in the originating summons. *Koperasi Kusuma (M) v. Pengarah Tanah dan Galian Selangor & Ors* (refd). (paras 11 & 12)

(2) The grievance of the plaintiffs whose lands had been compulsorily acquired clearly related to the amount of compensation that should be payable to them. That being so, the plaintiffs should have followed the procedure prescribed under ss. 36, 37 and 38 of the Act. Their claim by way of originating summons was clearly misconceived. The question of making available a specified size of a piece of land to them was also not maintainable for the same reason as the plaintiffs

whose leases had lapsed *ie*, that it was a matter not within the jurisdiction of the court, but that of the State Authority. (para 13)

(3) In conclusion, this was a plain and obvious case warranting the exercise of the court's power of striking out. (para 14)

[Order accordingly.]

Case(s) referred to:
Koperasi Kasuma (M) v. Pengarah Tanah dan Galian Selangor & Ors [1991] 2 CLJ 1371; [1991] 3 CLJ (Rep) 44 HC

Legislation referred to:
Federal Constitution, arts. 8, 13
Land Acquisition Act 1960, ss. 8(1), (2), 22, 36, 37(1)(a), (b), (c), (d), 38, 68
National Land Code, ss. 46(1)(a), 47(1), (2), 48, 228, 341

For the plaintiffs - KK Ngeh (Nga Hock Cheah, Cik Uma & LP Teoh with him); M/s Uma & Assoc
For the 1st, 2nd & 3rd defendants - KK Wong (Karen Lee with him); M/s Lee Hishammuddin
For the 4th defendant - Kamarolzaman Abideen, Assistant State Legal Advisor

Reported by Suresh Nathan

JUDGMENT

Zaleha Zahari J:

[1] The 1st defendant was awarded a concession to build the Traffic Dispersal Ring Road linking Kajang and its surrounding areas to Kuala Lumpur ("the project"). The lands which are the subject matter of this application were amongst the lands affected by the project. The plaintiffs contended that the defendants named had failed to discharge their duties and responsibilities in accordance with law.

[2] This originating summons is grounded on the basis that the plaintiffs fell into two groups, ie, those whose lands/properties were the subject of acquisition under the Land Acquisition Act 1960 ("the Act") and those who continued to stay on the lands upon expiration of their lease. All of them sought for the following: that the defendants were liable to pay to each plaintiff the sum of RM350,000 as well as to expeditiously make available and allot to

each of them a suitable piece of land of 3,500 square feet within the nearby vicinity at the defendants costs and expense, (para F). Pending the determination of these proceedings the defendants were to be restrained from demolishing or trespassing on to the plaintiffs' buildings or land (para G).

[3] Paragraphs H to Q, were posed in the form of questions. Whether the plaintiffs had a legitimate expectation upon the expiration of their lease for their leases to be extended by the 4th defendant pursuant to s. 228 of the National Land Code (the Code) as the plaintiffs had not contravened any of the conditions of their lease (para I)? Whether the 4th defendant pursuant to art. 8 read with art. 13 of the Federal Constitution was required to automatically extend the plaintiffs' leases upon expiration of their lease (para J?) Whether the 4th defendant was required to serve "Form K" on the plaintiffs before taking formal possession of the plaintiffs lands/properties under the Act (paragraph K)? Whether the notice of eviction dated 30 September 2003 was valid and of full effect (para L)? Pending compliance of s. 22 of the Act by the 4th defendant, whether the plaintiffs were entitled to continue to occupy their lands/properties notwithstanding the lands/properties having been acquired (para M)? Whether the extension of several expired leases at Sg Chua (not including the plaintiffs) whose application for extension of lease were pending for several years contravenes art. 8 of the Federal Constitution (para N)? Whether the 4th defendant had the right to evict the plaintiffs before payment of compensation to the plaintiffs or payment of the award into court (para O)? Whether the 1st, 2nd and 3rd defendant had the right to enter the plaintiffs' lands or properties or any part thereof for the carrying out of any works before formal possession was taken by the 4th defendant and the handing over the lands to the 1st, 2nd and 3rd defendants (para P)? Whether the 1st, 2nd and 3rd defendant were required to pay the compensation awarded into the 4th defendant's account, or pay the sum into court before commencing any works on the plaintiffs' lands or properties (para Q)?

The Striking Out Applications

[4] The 1st, 2nd and 3rd defendants *vide* encl. (10), whilst the 4th defendant *vide* encl. (22), applied to strike out the plaintiffs application based on common grounds. In respect of the plaintiffs whose leases had expired, it was alleged that they did not have

any right or interest recognised by law and therefore had no *locus standi* to commence these proceedings. The defendants' case was that the prayers sought for by this category of plaintiffs was not within the court's jurisdiction to make, but falls under the jurisdiction of the State Authority.

[5] As for the plaintiffs whose lands were subjected to acquisition proceedings in accordance with the procedure prescribed by the Act for the purposes of the project, the defendants case was that s. 8(1), 8(2), 37(1)(a)-(d) and s. 68 of the Act applies. These plaintiffs ceased to have any interest in respect of these acquired lands. If these plaintiffs were unhappy with the compensation which had been awarded, then the procedure which should have been adopted was for them to appeal by way of an application pursuant to s. 36-38 of the Act.

The Submissions

[6] Encik Wong, counsel for the 1st, 2nd and 3rd defendant, submitted that, in respect of the plaintiffs whose leases had expired, they no longer had any right or interest over the lands in question. It is within the discretion of the State Authority whether or not to extend such leases. Upon the leases not having been renewed, these lands reverts back and vests with the State Authority pursuant to s. 46(1)(a) of the Code. Pursuant to s. 47(1) and (2) of the Code, these plaintiffs were not entitled to compensation for buildings on the lands whose leases had lapsed. Encik Wong submitted that the State Authority's discretion to alienate State land, was non justiciable. The courts have no jurisdiction to review the exercise of such a discretion. To hold otherwise, to allow every owner whose lease has expired to apply for a court order directing the State Authority to extend the lease in question, would be opening the floodgates. The plaintiffs whose leases had expired were in unlawful occupation of the lands concerned. Their claim to having a legitimate expectation for their leases to be renewed under s. 228 of the Code was misconceived. In respect of the plaintiffs whose lands had been acquired they ceased to have any interest on lands which had been compulsorily acquired for the purposes of the project in accordance with the procedure prescribed by the Act.

[7] The 4th respondent counsel was on common ground with counsel for the 1st to 3rd respondent, that upon expiration of a lease, the owner concerned no longer had any right to the land

in question as the land reverts back to State Authority pursuant to s. 46 of the Code. The word "shall" used in s. 46(1)(a) of the Code means that it was mandatory for the land to revert to the State Authority upon expiration of a lease. In respect of the plaintiffs whose land had been acquired, all provisions under the Act had been complied with. The plaintiffs who falls in this category no longer had any interest under the acquired lands or part that had been acquired. In view of the monetary amount being claimed, he submitted that, should any of the plaintiffs falling under this category be unhappy with the amount of compensation that had been awarded under the Act, they should have exercised their right to appeal by way of reference to the High Court pursuant to ss. 36-38 of the Act. The question of paying the amount claimed to this category of plaintiffs does not accordingly arise. As to the prayer sought for the court to make an order that a specified size of a piece of land be made available to the plaintiffs, this clearly was not within the jurisdiction of the court, but falls within the jurisdiction of the State Authority.

[8] The plaintiffs counsel's response to these submissions were these. It was unfair to label the plaintiffs whose leases had expired as "squatters" in view of the evidence of some having paid assessment and Quit Rent. Whether upon expiration of the leases, the lands reverted back to the State, and whether this category of plaintiffs had a legitimate expectation for the extension of their lease and a presumption of automatic renewal, were issues to be tried.

[9] The plaintiffs counsel argued that the defendants were only entitled to take possession of the acquired lands upon service of "Form H" and issuance of "Form K". Until then, a landowner is entitled to continue to be in occupation of the said land/premises. As some of the plaintiffs had disputed service of "Form K" the plaintiffs' counsel argued that this was also an issue to be tried.

Decision

[10] The plaintiffs has chosen to commence these proceedings by way of originating summons and parties have filed affidavits in support of and in opposition to the said application. The question of a "trial" on the issues raised as such as submitted by the plaintiff's counsel does not accordingly arise. What the court has to determine is whether based on the facts disclosed in the

affidavit filed in support and in opposition to the application, whether this is a plain and obvious case warranting the court to exercise its power of striking out.

[11] In making a considered decision in this case the provisions referred to the counsels for the defendants must necessarily be given effect to. Section 46 and 47 of the Code states as follows:

> 46(1) Without prejudice to the provisions of any other written law for the time being in force, alienated land shall revert to and vest in the State Authority in the following circumstances:
>
> (a) upon the expiry of the term (if any) specified in the document of title thereto;
>
> ...
>
> ...
>
> 47(1) On the reversion of any alienated land to the State Authority, or the determination of any lease of reserved land, ... there shall, subject to subsection (3), vest in the State Authority all buildings on the land (by whomsoever erected) other than any of temporary construction and capable of removal.
>
> (2) Subject to subsection (3), no compensation shall be payable by the State Authority in respect of any building vesting in it pursuant to this section.

Note is also taken of ss. 48 and 341 of the Code which provides:

> 48. No title to State land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever.
>
> 341. Adverse possession of land for any length of time whatsoever shall not constitute a bar to the bringing of any action for the recovery thereof by the proprietor or any person or body entitled to an interest therein, and accordingly, the Limitation Act 953 [Act 245], shall in no circumstances operate to extinguish any title to, or interest in, land.

[12] From these provisions it is abundantly clear that upon the expiration of a lease, the land reverts back to the State Authority. I am in agreement with the counsels for the defendants that the power to extend a lease falls within the jurisdiction of the State Authority, not the court. (See *Koperasi Kasuma (M) v. Pengarah Tanah dan Galian Selangor & Ors* [1991] 2 CLJ 1371; [1991] 3

CLJ (Rep) 44). The plaintiffs who falls under this category clearly had no *locus standi* to commence these proceedings and were accordingly not entitled to the orders prayed for in this originating summons.

[13] The grievance of the plaintiffs whose lands had been compulsory acquired clearly relates to the amount of compensation that should be payable to them. That being so, the procedure that should have been followed by these plaintiffs must necessarily be that as prescribed under s. 36, 37 and 38 of the Act. Their claim by way of originating summons was clearly misconceived. The question of making available a specified size of a piece of land to them was also not maintainable for the same reason as the plaintiffs whose leases had lapsed, ie, that it was a matter not within the jurisdiction of the court, but falls within the jurisdiction of the State Authority.

[14] To conclude, this is a plain and obvious warranting the exercise of the courts power of striking out. I accordingly granted an order in terms of the application in encls. (10) and (22). The application against the 1st and 3rd defendant was struck out with no order as to costs upon counsel for the 1st to 3rd defendants not claiming for costs. The application against the defendants were struck out with costs as against the 4th defendant.